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 MONSOON ENTERPRISES, INC., a California corporation

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

NEXTDOOR.COM, INC., a Delaware  
 corporation,

Plaintiff,

v.

RAJ ABHYANKER, an individual,  
 Defendant.

RAJ ABHYANKER, an individual,  
 Counterclaimant,

v.

NEXTDOOR.COM, INC., a Delaware  
 corporation; PRAKASH JANAKIRAMAN, an  
 individual; BENCHMARK CAPITAL  
 PARTNERS VII, L.P., a Delaware limited  
 partnership; BENCHMARK CAPITAL  
 MANAGEMENT CO. VII LLC, a Delaware  
 limited liability company; SANDEEP SOOD, an  
 individual; MONSOON COMPANY, an unknown  
 business entity, and DOES 1-50, inclusive,  
 Counterdefendants.

Case No.: 3:12-cv-05667-EMC

**COUNTERDEFENDANTS SANDEEP SOOD  
 AND MONSOON ENTERPRISES, INC.'S  
 MEMORANDUM OF POINTS AND  
 AUTHORITIES IN SUPPORT OF MOTION  
 TO DISMISS COUNTERCLAIMS**

Complaint Filed: November 5, 2012  
 Countercomplaint Filed: January 10, 2013

Date: May 2, 2013  
 Time: 1:30 PM  
 Judge: Honorable Edward M. Chen

{00013042;1}

## I. INTRODUCTION

Defendant and Counterclaimant Raj Abhyanker (“Abhyanker”) brings this action against Counterdefendants Sandeep Sood (“Sood”) and Monsoon Enterprises, Inc., a California corporation (erroneously sued herein as Monsoon Company, an unknown business entity) (“Monsoon”)<sup>1</sup> for trade secret misappropriation and breach of written contract arising from a business, Fatdoor, Inc. (“Fatdoor”) that Abhyanker once allegedly worked for and was subsequently fired from and which was ultimately acquired by Google, Inc.

Aside from the glaring issue of standing, Abhyanker’s claims are replete with mere speculation. At one point, Abhyanker concludes that because Sood was not selected to be part of Fatdoor’s founding team (as a result of, according to Abhyanker’s own admission, Sood’s “outspoken disagreement with Fatdoor’s chosen direction and technology”) that Sood was “left disgruntled with a clear axe to grind.” See Counterclaim ¶113. We are asked to conclude that Sood was so upset about not being chosen to be part of a business model that he clearly did not believe in that he must have disclosed trade secrets. Such leaps of conclusion stretch the limitations of plausibility and certainly don’t comport to standards of pleading articulated under *Twombly* and *Iqbal*.

Beyond just resting his claims on mere speculation, there are independent bases upon which the Counterclaim should be dismissed. First, Abhyanker does not come close to alleging the facts necessary to state a claim for trade secret misappropriation. He has failed, *inter alia*, to identify the asserted trade secrets with the requisite level of specificity, to demonstrate if and how Sood or Monsoon had access to Abhyanker’s purported trade secrets or what purported trade secrets Sood or Monsoon allegedly disclosed. Second, the only “trade secret” that Abhyanker actually does allege that Plaintiff and Counterdefendant Nextdoor.com, Inc. (“Nextdoor”) used -- the idea for a neighborhood-based social networking website called “Nextdoor” -- *was publicly disclosed in a patent application Abhyanker filed that was published before the alleged misappropriation*. Thus, any trade secret protection that could have existed in that idea was long since surrendered. Third, Abhyanker’s claim for breach of contract

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<sup>1</sup> Since its formation, Sood has been a shareholder and officer of Monsoon Enterprises, Inc. Monsoon Enterprises, Inc. was formerly known as Big Circle Media, Inc.

1 does not state any sort of viable claim that can comport with the standards required under *Twombly* or  
 2 *Iqbal*. Fourth, Abhyanker has asserted his breach of written contract counterclaim against *only* Sood and  
 3 Monsoon, neither of who was a party to the original action. Abhyanker may only assert counterclaims  
 4 against Sood and Monsoon that he also asserts against the original plaintiff in this action –  
 5 Nextdoor.com. Because the Counterclaim is fatally deficient in numerous respects, both claims against  
 6 Sood and Monsoon should be dismissed *with prejudice*.

## 7 II. FACTUAL BACKGROUND

### 8 A. Nextdoor/Fatdoor.

9 Abhyanker alleges that he developed the “Nextdoor” concept for a private online neighborhood  
 10 social network by September 2006. Dkt. 16 (“Counterclaim”) ¶ 108. While Abhyanker now alleges that  
 11 the Nextdoor concept was entirely separate from his “Fatdoor” concept (Counterclaim ¶ 110),  
 12 Abhyanker’s previous complaints filed in Santa Clara County Superior Court Case No. 1-11-CV-212924  
 13 (the “State Court Action”) make clear that they were one and the same. Indeed, Abhyanker’s previous  
 14 allegations explain that he formed an entity called Fatdoor, Inc. to pursue what he described as the  
 15 “Nextdoor/Fatdoor” concept, characterizing the “Nextdoor/Fatdoor business model” as “neighborhood  
 16 social networking.” See Request for Judicial Notice (“RJN”) Exhibit 2 (“FAC”) ¶¶ 3, 21. Abhyanker  
 17 alleged that he was working on behalf of his then-employer Fatdoor in developing this Nextdoor/Fatdoor  
 18 concept, and that Fatdoor owned the resulting intellectual property. See, e.g., *id.* ¶¶ 3, 20, 21, 23, 107,  
 19 109, 111.

20 Abhyanker publicly disclosed this Nextdoor/Fatdoor concept by filing a patent application that  
 21 was published for public view at least as early as September 20, 2007. RJN Exhibit 3. This publication  
 22 occurred at least three years before any alleged disclosure by Sood and nearly four years before the  
 23 public launch of Nextdoor.com’s website. Counterclaim ¶¶ 134-136, 147.

24 Abhyanker was terminated by Fatdoor’s board of directors in July 2007. FAC ¶ 107. Thereafter,  
 25 Fatdoor abandoned the idea of a neighborhood social networking website and transitioned into a local  
 26 website for mothers to plan events, changing its name to “Center’d.” which later was changed to  
 27 DealMap. *Id.* ¶ 111. In August 2011, DealMap, along with all of its intellectual property, was acquired  
 28

1 by Google. *Id.* Notably, Abhyanker does not allege -- in the Counterclaim or elsewhere -- that he ever  
 2 reacquired any intellectual property relating to the Nextdoor/Fatdoor concept.

3 **B. Abhyanker's State Court Litigation.**

4 On November 10, 2011, Abhyanker filed his initial complaint in the State Court Action. In  
 5 addition to suing Nextdoor.com, he also named as defendants several of its founders and investors,  
 6 including Counterdefendant herein, Benchmark Capital ("Benchmark"). *See* RJN Ex. 1 ("Complaint").  
 7 Abhyanker filed a First Amended Complaint in that action on December 6, 2011. *See* FAC. Neither  
 8 Sood nor Monsoon was named defendants in either the Complaint or the First Amended Complaint,  
 9 even though the thrust of Abhyanker's allegations in the State Court Action mirrored Abhyanker's  
 10 Counterclaim.

11 In contrast to his Counterclaim here, Abhyanker's pleadings in the State Court Action  
 12 acknowledged that Google, Inc. (not Abhyanker) owns any intellectual property at issue. *See* Complaint  
 13 ¶ 5; FAC ¶ 23 ("[t]he entire basis for Nextdoor.com, Inc.'s business rests on these stolen and  
 14 misappropriated materials now owned by Google, Inc. through its acquisition of the Nextdoor/Fatdoor  
 15 patent portfolio"); *see also* FAC ¶ 169 ("Google, Inc. now owns the rights to the original technology of  
 16 the Nextdoor/Fatdoor concept"). Abhyanker voluntarily dismissed his First Amended Complaint after  
 17 defendants filed demurrers thereto.

18 **C. Instant Action.**

19 Nextdoor.com brought forth the instant action against Abhyanker before this Court seeking  
 20 declaratory relief and trademark infringement arising from Abhyanker's use of the NEXTDOOR mark.  
 21 *See generally* Dkt. No. 1. Neither Sood nor Monsoon have been named or even mentioned in  
 22 Nextdoor.com's Complaint. Abhyanker responded thereto with his Counterclaim alleging various  
 23 claims against Nextdoor.com and several nonparties to the original action, namely Janakiraman, Sood,  
 24 Monsoon, and Benchmark. *See generally* Dkt No. 16. Most of these claims are merely restatements of  
 25 earlier claims made in the State Court Action with certain convenient recharacterizations. Chief among  
 26  
 27  
 28



1 the recharacterization is that Fatdoor and Nextdoor were “separate” businesses and that he, not Google,  
2 owns the Nextdoor Trade Secrets<sup>2</sup>.

3 Abhyanker makes essentially three allegations against Sood and Monsoon in his Counterclaim.  
4 First, that he hired Monsoon to provide certain software and website development services pursuant to  
5 an alleged written contract in late 2006. Counterclaim ¶¶ 109-110. During the approximately 30 days  
6 from the inception of the contract to when Abhyanker claims to have placed the Nextdoor concept on  
7 hold, Abhyanker alleges to have provided Monsoon and Sood access to certain concept and trade secret  
8 information for his Nextdoor concept- presumably the “Nextdoor Trade Secrets”). Second, Abhyanker  
9 claims that three years later, Sood responded to a survey circulated by Nextdoor.com. Counterclaim ¶¶  
10 134-135. Third, that at some point after his response to the survey (and at a time when Nextdoor.com  
11 had already developed the core of their business model), Sood disclosed the alleged trade secrets to  
12 Nextdoor.com. Counterclaim ¶¶ 136, 144.

### 13 III. ARGUMENT

14 A motion to dismiss should be granted if the plaintiff is unable to articulate facts establishing a  
15 claim to relief that is “plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 173  
16 L.Ed.2d 868 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S.Ct. 1955, 167  
17 L.Ed.2d 929 (2007)); *Wilson v. Hewlett-Packard Co.*, 668 F.3d 1136, 1140 (9th Cir. 2012). “[A]  
18 plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels  
19 and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Twombly*,  
20 550 U.S. at 555 (citations omitted). The complaint must allege facts which, when taken as true, raise  
21 more than a speculative right to relief. *Id.* The facts must “nudge [the] claims across the line from  
22 conceivable to plausible.” *Id.* at 570. *Twombly* serves to remind the district courts that they are entitled  
23 to “insist upon some specificity in pleading before allowing a potentially massive factual controversy to  
24 proceed.” *Facebook, Inc. v. Power Ventures, Inc.*, 08-5780, 2009 WL 3429568, at \*2 (N.D. Cal. Oct.  
25 22, 2009).

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26  
27 <sup>2</sup> Additionally, Abhyanker now sues Sood and Monsoon though he had previously alleged in the State Court Action that somehow the very  
28 same “Next Door Trade Secrets” alleged to have been disclosed to Nextdoor.com in the Counterclaim had been disclosed without the  
involvement of Sood or Monsoon.

Where one of multiple theories pled in support of a cause of action is deficient, courts should dismiss those theories separately. *See, e.g., Architectural Mailboxes, LLC v. Epoch Design, LLC*, Case No. 10-CV-974, 2011 U.S. Dist. LEXIS 46180, at \*18 (S.D. Cal. Apr. 28, 2011) (dismissing Lanham Act unfair competition claim to the extent it relied upon an alternate and deficient false designation of origin theory while allowing this same claim to go forward on a false advertising theory); *Burch v. GMAC Mortgage, LLC*, No. C-09-4214, 2010 U.S. Dist. LEXIS 23659, at \*5 n.1 (N.D. Cal. Mar. 15, 2010) (dismissing Truth in Lending Act claim to the extent it relied upon a deficient failure to deliver theory while allowing this same claim to go forward on a second alternate theory); *Camplaie v. BAC Home Loans Servicing, LP*, 706 F. Supp. 2d 1029, 1055 (E.D. Cal. 2009) (granting motion to dismiss as to certain specific theories plead in support of a cause of action).

In ruling on a motion to dismiss, the Court need not accept as true any conclusory allegations, legal conclusions, unwarranted deductions of fact or unreasonable inferences. *See Clegg v. Cult Awareness Network*, 18 F.3d 752, 754-55 (9th Cir. 1994). The Court may also disregard allegations that are contradicted by documents attached to the complaint, incorporated by reference, or otherwise judicially noticeable. *See Shwarz v. United States*, 234 F.3d 428, 435 (9th Cir. 2000); *Steckman v. Hart Brewing Inc.*, 143 F.3d 1293 (9th Cir. 1988); *Coto Settlement v. Eisenberg*, 593 F.3d 1031, 1038 (9th Cir. 2010); *Parrino v. FHP, Inc.*, 146 F.3d 699, 705-06 (9th Cir. 1998); *Intri-Plex Technologies, Inc. v. Crest Grp., Inc.*, 499 F.3d 1048, 1052 (9th Cir. 2007).

Nor must the Court give credence to allegations that are contradicted by allegations in the plaintiff's prior pleading. *See, e.g., Adams v. Vivo Inc.*, C 12-01854, 2012 U.S. Dist. LEXIS 109199, at \*7 (N.D. Cal. Aug. 3, 2012) ("The district court will not accept as true pleading allegations that are contradicted by facts that can be judicially noticed or by other allegations or exhibits attached to or incorporated in the pleading"); *Bauer v. Goss*, C 12-00876, 2012 U.S. Dist. LEXIS 95334, at \*9-\*10 (N.D. Cal. July 10, 2012) (dismissing complaint where plaintiff attempted to contradict allegations in a previous pleading).

**A. Abhyanker Admittedly Does Not Own Any of the Purported Trade Secrets Asserted Here.**

Under the California Uniform Trade Secrets Act (“CUTSA”), ownership of a valid trade secret is a prerequisite to a claim for trade secret misappropriation. *See, e.g., California Police Activities League v. California Police Youth Charities, Inc.*, 2009 WL 537091, at \*4 (N.D. Cal. Mar. 3, 2009) (dismissing claim for failure to allege ownership). Abhyanker fails to allege facts in support of this threshold element.

While Abhyanker now conclusorily alleges that he owns a laundry list of vaguely identified trade secrets related to the Nextdoor/Fatdoor business concept (Counterclaim ¶ 149), that conclusion cannot be credited because it is flatly contradicted by Abhyanker’s own previous concessions in the State Court Action. In the State Court Action, Abhyanker candidly admitted that he does not own any of the Fatdoor/Nextdoor trade secrets—instead explaining that they were acquired by Google through its acquisition of Fatdoor, Abhyanker’s previous employer. Specifically, Abhyanker alleged in both his FAC in the State Court Action that “[t]he entire basis for Nextdoor.com, Inc.’s business rests on these stolen and misappropriated materials *now owned by Google, Inc.* through its acquisition of the Nextdoor/Fatdoor patent portfolio.” FAC ¶ 23 (emphasis added). Abhyanker further explained that, having purchased the assets of the successors to Fatdoor, Inc., “Google, Inc. now owns the rights to the original technology of the Nextdoor/Fatdoor concept” (FAC ¶ 169) and that he attempted to bring Google into his lawsuit as a plaintiff. *Id.* ¶ 163. As Abhyanker’s prior pleadings made clear, any trade secrets, including potential use of the domain name “www.nextdoor.com,” were the property of Fatdoor, Inc., and now the property of Google.

Abhyanker’s Counterclaim is a transparent attempt to avoid the effect of these previous concessions by pursuing his claims in a different forum. But Abhyanker cannot escape his previous admissions. They are binding, and the Court should not accept Abhyanker’s revisionism. *See, e.g., Falcocchia*, 709 F. Supp. 2d at 887 (dismissing based on contradictory allegations in previous state court filings); *Tripati*, 2005 U.S. Dist. LEXIS 38093, at \*6 (same); *Bauer*, 2012 U.S. Dist. LEXIS 95334, at \*8-\*10 (dismissing claims based on contradictions between complaints). *Bauer* is instructive on this point. In that case, the plaintiff had alleged in its original complaint that it entered into a written

1 agreement with the defendant for the provision of legal services. *Id.* at \*8. That agreement contained a  
 2 forum selection clause designating Washington as the proper forum for any dispute. Following a motion  
 3 to dismiss the California action for improper venue, the plaintiff filed an amended complaint contending  
 4 that the defendant was *not* a party to any agreement with the plaintiff. *Id.* at \*8-\*9. The court refused to  
 5 credit these allegations, explaining that they were contradicted by the plaintiff's original complaint, and  
 6 dismissed the case. *Id.*

7 Here, Abhyanker's previous allegations doom his trade secret claim. Abhyanker's own  
 8 allegations confirm that he does not own any of the trade secrets asserted here and did not own them at  
 9 the time of the alleged misappropriation.<sup>3</sup> To the extent any claims could exist, they do not belong to  
 10 Abhyanker. As such, Abhyanker lacks standing and his trade secret and intentional interference claims  
 11 should be dismissed with prejudice.

12 **B. Abhyanker Has Not Adequately Alleged Trade Secret Misappropriation.**

13 Even if Abhyanker had standing, his misappropriation claim would still fail because he has failed  
 14 to allege even the most basic facts in support of the elements of such a claim. Those elements are: (1)  
 15 ownership of a valid trade secret; (2) that the defendant acquired, disclosed, or used the trade secret  
 16 through improper means; and (3) that the defendant's actions have harmed the plaintiff. *See, e.g.,*  
 17 *Nexsales Corp. v. Salebuild, Inc.*, 2012 WL 216260, at \*2 (N.D. Cal. Jan. 24, 2012) (Chen, J.).  
 18 Abhyanker must plead *facts* in support of these elements—not just conclusions. *Id.* (conclusory  
 19 allegations that “fail[] to identify the information that was taken, and do[] not provide facts  
 20 demonstrating that the information constitutes a trade secret” are insufficient to defeat a motion to  
 21 dismiss); *Bespaq Corp. v. Haoshen Trading Co.*, 2005 WL 14841, at \*4 (N.D. Cal Jan. 3, 2005) (bare  
 22 allegation that the defendant misappropriated “customer lists,” “pricing information,” and “marketing  
 23 strategies” too conclusory to state a claim for trade secret misappropriation). Abhyanker has failed as to  
 24 all three elements.

27 <sup>3</sup> Indeed, Sood is not alleged to have disclosed anything to Nextdoor.com until end of 2010, several years after Abhyanker was fired.  
 28 Counterclaim ¶¶ 134-36.



1                   **1.       Abhyanker Has Not Sufficiently Identified Any Trade Secrets.**

2                   It is black letter law that a plaintiff must reasonably identify its trade secrets to survive a motion  
3 to dismiss. Following the California Court of Appeal, the Northern District has explained that:

4                   Before a defendant is compelled to respond to a complaint upon claimed  
5 misappropriation or misuse of a trade secret and to embark on discovery  
6 which may be both prolonged and expensive, the complainant should  
7 describe the subject matter of the trade secret with sufficient particularity  
to separate it from matters of general knowledge in the trade or of special  
knowledge of those persons who are skilled in the trade, and to permit the  
defendant to ascertain at least the boundaries within which the secret lies.

8                   *Farhang v. Indian Institute of Technology*, 08–02658, 2010 WL 2228936, at \*13 (N.D. Cal. June 1,  
9 2010) (citing *Diodes, Inc. v. Franzen*, 260 Cal. App. 2d 244, 253 (1968)).

10                  A trade secret is statutorily defined as “information, including a formula, pattern, compilation,  
11 program, device, method, technique, or process, that: (1) derives independent economic value, actual or  
12 potential, from not being generally known to the public or to other persons who can obtain economic  
13 value from its disclosure or use; and (2) is the subject of efforts that are reasonable under the  
14 circumstances to maintain its secrecy.” Cal. Civ. Code § 3426.1. Under the standard articulated in  
15 *Farhang*, enough has to be pled for the Court to assess whether the plaintiff plausibly can claim  
16 ownership of a valid trade secret under this definition. Doing so requires more than conclusory labels,  
17 buzz words, and vague descriptions. *Farhang*, 2010 WL 2228936, at \*14 (“business models and  
18 implementations” of mobile data access system insufficiently specific to state a misappropriation claim);  
19 *Diodes*, 260 Cal. App. 2d at 252 (“secret process” for the manufacture of diodes insufficient to state a  
20 claim); *Bespaq*, 2005 WL 14841, at \*4 (allegations that defendant misappropriated “customer lists,”  
21 “pricing information,” and “marketing strategies” regarding dollhouse furniture too conclusory to state a  
22 claim).

23                  Abhyanker’s allegations do not come anywhere near this standard. Instead, all he offers are  
24 labels with no context and no explanation of what was secret and valuable within the broad terms  
25 included within his definition of Nextdoor Trade Secrets. *See* Counterclaim ¶ 149 (alleging that Sood  
26 and Monsoon misappropriated and disclosed “a wide variety of information” including “key product  
27 details,” “algorithms,” “business plans,” “product concepts,” “methods,” “works of authorship,”  
28 “instrumentalities”). Nothing even approaching a concrete, viable trade secret is alleged.

1 While Abhyanker need not fully specify the metes and bounds of his alleged trade secrets in a  
 2 public complaint, he is obligated to provide enough details to put Sood and Monsoon on notice of  
 3 precisely what it is they are accused of misappropriating. Thus, although he need not submit the exact  
 4 specifications of an algorithm (or concept, method, plan, or instrumentality) with his complaint, he must  
 5 at least explain what algorithm(s) he is referring to, and why it was valuable and secret. Because  
 6 Abhyanker has failed to do so, his Counterclaim should be dismissed.

7 **2. Abhyanker Has Failed to Allege How Sood or Monsoon Wrongfully**  
 8 **Acquired or Disclosed His Trade Secrets.**

9 Trade secret misappropriation requires either (1) the acquisition of a trade secret by improper  
 10 means, or (2) the use or disclosure of a trade secret known to have been acquired by improper means.  
 11 Cal. Civ. Code 3246.1(b)(1) and (2). Abhyanker fails to allege facts explaining how Sood or Monsoon  
 12 acquired or used his alleged trade secrets. Again, *facts* are required to support these essential elements  
 13 of the claim. *See Pellerin v. Honeywell Int'l Inc.*, 11-CV-01278, 2012 U.S. Dist. LEXIS 94635, at \*11  
 14 (S.D. Cal. July 6, 2012). Bare conclusions and unwarranted inferences -- which are all the Counterclaim  
 15 offers -- plainly are insufficient. *Id.*

16 First, Abhyanker fails to allege that Sood or Monsoon acquired the trade secrets by improper  
 17 means. Abhyanker acknowledges that he voluntarily provided information to Sood and Monsoon  
 18 sometime in September 2006. Counterclaim ¶ 109. Setting aside the question of what was provided and  
 19 if it amounted to protectable trade secrets<sup>4</sup>, the Counterclaim fails to plausibly allege, other than  
 20 unwarranted inference, any wrong doing by Sood or Monsoon in acquiring any information from  
 21 Abhyanker.<sup>5</sup>

22 Second, Abhyanker conclusively alleges Sood and Monsoon disclosed the Nextdoor Trade  
 23 Secrets to Nextdoor.com and Janakiraman. Counterclaim ¶¶ 136, 153. But there is not a single fact pled  
 24 in the Counterclaim to warrant this conclusion. As the Counterclaims is devoid of any allegations of fact  
 25 by

26 \_\_\_\_\_  
 27 <sup>4</sup> As alleged in Section III B above, Abhyanker has failed to specify the alleged trade secrets with any level of required specificity.

28 <sup>5</sup> That Sood and Monsoon had some long elaborate and forward looking plan to obtain the alleged trade secrets, hold them for years and then  
 disclose them to an acquaintance for no apparent financial gain or benefit other than to destroy Abhyanker's business.

(even if true) that would support the finding that Nextdoor.com is using any of Abhyanker's trade secrets, there is no basis to even speculate that Sood or Monsoon "disclosed" anything to anyone. As to the alleged disclosure by Sood (who as admitted by Abhyanker worked with or for Abhyanker for a brief period in 2006 (Counterclaim, ¶109)), the Counterclaim merely alleges that Sood and Janakiraman attended Berkeley and are friends (*Id.* ¶ 127) and that Sood participated in a survey Nextdoor.com sent to its friends and family members in 2010 to gather their feedback regarding the Company's concept for an online neighborhood social network. *Id.* ¶¶ 134-137. It is important to note here that by alleging that Nextdoor.com conducted this survey, Abhyanker necessarily concedes that Nextdoor.com had *already come up with the concept for an online neighborhood-based social network* prior to any disclosure of trade secrets that Sood may have made in his survey response or thereafter. *See* ¶ 133-135. Further, Abhyanker tellingly does not allege that Sood actually made any such unlawful disclosure in his survey response, much less what he purportedly disclosed. *Id.* Based on these separate innocuous facts and Sood's alleged "downplay[ing]" of his relationship with Janakiraman, Abhyanker leaps to the conclusion that "Sood was trying to conceal his wrongful conduct of disclosing Abhyanker's Nextdoor Trade Secrets to Janakiraman and Nextdoor.com." Counterclaim ¶¶ 128, 130. In essence, Abhyanker asks the Court to conclude that because Sood and Janakiraman were friends, and because Janakiraman was employed by Nextdoor.com, disclosure was inevitable. However, California courts reject the doctrine of inevitable disclosure even in the employment context, let alone among friends. *See Les Concierges, Inc. v. Robeson*, C-09-1510, 2009 U.S. Dist. LEXIS 39414, at \*4 (N.D. Cal. Apr. 27, 2009) ("a threat of misappropriation cannot, as a matter of California law, be inferred from the fact Robeson, upon voluntarily terminating his employment with LC US, immediately began working for a direct competitor and appears to be performing for his new employer the same or similar job duties").

Further, the mere allegations made herein do no rise to the level of pleading that is "plausible on its face" within the meaning of *Iqbal*. For example, Abhyanker alleges that Sood and Monsoon "improperly induced and encouraged Nextdoor.com and its founders to use Abhyanker's Nextdoor Trade Secrets." Counterclaim ¶ 153. In the very next paragraph, Abhyanker claims that Janakiraman and Nextdoor.com induced Sood and Monsoon "to breach the confidentiality agreements and obligations to Abhyanker by persuading them to disclose Abhyanker's Nextdoor Trade Secrets to them."



Counterclaim ¶ 154. However, no facts are provided to support either of these two contradictory conclusions. To compound this failure, by Abhyanker's own admission, as well as his admission in the State Court Action, there are sources other than Sood and Monsoon from whom Nextdoor.com could have received the alleged "Nextdoor Trade Secrets." By way of example, Abhyanker alleges that Janakiraman and Nextdoor.com encouraged Benchmark to improperly disclose Abhyanker's trade secret information.<sup>6</sup> Counterclaim ¶ 154. As such, Abhyanker's allegation that Monsoon and Sood disclosed the purported trade secrets to Nextdoor.com is simply mere speculation on his part. Abhyanker has thus failed in every respect to allege facts demonstrating that Sood or Monsoon unlawfully acquired, used or disclosed his purported trade secrets.

### 3. Abhyanker Has No Plausible Theory of Damages.

California law provides that a plaintiff must establish that he has been directly harmed by the alleged misappropriation. *Computer Sciences Corp. v. Computer Assocs. Int'l, Inc.*, CV 98-1374, 1999 U.S. Dist. LEXIS 21803, at \*42 (C.D. Cal. Aug. 13, 1999). Abhyanker's own allegations in the State Court Action (discussed above) make clear that he did not own the trade secrets at issue or even work for the company (Fatdoor and its successors) that did own them at the time of the purported misappropriation. He is thus hard pressed to argue that he suffered harm from the theft of trade secrets he does not own, either then or now. Moreover, as the Counterclaim is devoid of any allegations of fact (even if true) that would support the finding that Nextdoor.com is using any of Abhyanker's trade secrets, there can be no basis for any damages against Sood or Monsoon. Because Abhyanker has failed to allege facts in support of all three elements of his misappropriation claim, it should be dismissed.

#### C. Any Trade Secret Rights in the Nextdoor Name and Concept Disappeared When They Were Publicly Disclosed.

Regardless of the specificity of his allegations, Abhyanker could never base his claim for misappropriation on acquisition or use of the concept of an online neighborhood-based social networking service called "Nextdoor," because Abhyanker disclosed that concept in a patent application

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<sup>6</sup> Abhyanker additionally claims that Benchmark "improperly induced and encouraged Nextdoor.com and its founders to use "Abhyanker's Nextdoor Trade Secrets." See Counterclaim ¶ 152.



1 he filed in November 2006 and which was published in September 2007. This was nearly six years  
 2 before Nextdoor launched its service (Counterclaim ¶¶ 145-147) and well in advance of Sood's alleged  
 3 disclosure of the concept to Nextdoor.com and Janakiraman, which supposedly took place in October of  
 4 2010. *Id.* ¶¶ 134-136. As noted above, this is the only purported trade secret that Abhyanker describes  
 5 in anything but the most conclusory terms, as well as the only one that he actually alleges Nextdoor.com  
 6 or Janakiraman used. *See, e.g.*, Counterclaim ¶ 149.

7 The law is clear that disclosure of a trade secret in a patent application releases that information  
 8 to the public and, accordingly, extinguishes any trade secret protection that might exist. *See, e.g.*,  
 9 *Forcier v. Microsoft Corp.*, 123 F. Supp. 2d 520, 528 (N.D. Cal. 2000) ("all of Forcier's alleged trade  
 10 secrets had been placed in the public domain either in patents or in patent applications  
 11 . . . more than a year before Microsoft purchased the technology from Aha! . . . Consequently, the  
 12 element of secrecy was gone by the time that Microsoft acquired the information, the 'trade secret' status  
 13 was extinguished"); *Ultimax Cement Mfg. Corp. v. CTS Cement Mfg. Corp.*, 587 F.3d 1339, 1355-56  
 14 (Fed. Cir. 1999) (applying California law and holding that disclosure of trade secret information in a  
 15 foreign patent eliminates any trade secret protection).

16 Abhyanker's published patent application described in specific terms a map-based, neighborhood  
 17 social network in which users could post information about themselves and their communities. RJN Ex.  
 18 C (*see, e.g.*, Abstract and Figures 1, 8, 9). While most of the figures called this system Fatdoor,  
 19 Abhyanker explained that one embodiment of that idea was to be called "nextdoor.com." *Id.* Ex. C at  
 20 p.56, ¶ 236. There can be no dispute from the face of this judicially noticeable patent application that  
 21 the concept of a neighborhood social networking website called "Nextdoor" was disclosed years in  
 22 advance of Nextdoor's adoption of the "Nextdoor" name for a social networking website, even as  
 23 alleged by Abhyanker. Counterclaim ¶¶ 138, 145-147 (alleging that the Company in October 2010  
 24 operated as "'Neighborly' prior to misappropriating Abhyanker's Nextdoor name and mark"; and that  
 25 the Company acquired the domain "nextdoor.com" in February 2011). Sandeep or Monsoon could not  
 26 have misappropriated or disclosed any trade secrets, as a matter of law, because none existed.

1 Because there was no trade secret in the Nextdoor name or business concept to protect, this Court  
2 should dismiss Abhyanker's trade secret misappropriation claim with prejudice to the extent that it is  
3 based upon the purported theft of this name and concept.

4 **D. Abhyanker Has Failed To State A Claim for Breach of Written Contract.**

5 **1. Abhyanker's Allegations Fail to Rise Above the Level of Mere Speculation**

6 The essential elements for a breach of a contract claim are (1) a valid contract between plaintiff  
7 and defendant; (2) plaintiff's performance or excuse for non-performance under the contract; (3)  
8 defendant's breach of the contract; and (4) damage to plaintiff resulting from the breach. *Acoustics, Inc.*  
9 *v. Trepte Constr. Co.*, 14 Cal. App. 3d 887, 913 (1971); *see also* CACI Jury Instruction No. 303: Breach  
10 of Contract—Essential Factual Elements. Here Abhyanker's allegations as to Sood and do not rise  
11 beyond the speculative level required under *Iqbal* or *Twombly*.

12 First, as discussed in Section II, it is implausible that Abhyanker, in his individual capacity,  
13 would have entered into a valid written contract with Sood or Monsoon<sup>7</sup>. It is clear from the State Court  
14 Action that Abhyanker was acting as an agent of Fatdoor in the development of the Nextdoor concept. It  
15 is telling that Abhyanker has failed to attach a copy of the alleged written agreement that could shed  
16 light on the parties or the covenants and terms surrounding confidentiality if any and exceptions thereto.

17 Second, as discussed in Section III B. and C. above, Abhyanker has failed to allege any plausible  
18 allegations that would support his claim that either Sood or Monsoon disclosed any information to  
19 Janakiraman and Nextdoor.com. Absent such a showing of disclosure, no breach by either Sandeep or  
20 Monsoon could have occurred. Moreover, as set forth in Section III B.2. above, by Abhyanker's own  
21 admission, the disclosure of information to Janakiraman and Nextdoor.com could have been made by  
22 parties other than Sood or Monsoon. Lastly, as set forth in Section III C. above, even assuming that  
23 Sood or Monsoon did disclose the information and that Nextdoor.com used such information- both of  
24 which are specifically denied as argued herein- there is no plausible claim for damages. Given that  
25 Abhyanker's own allegations in the State Court Action make clear that he did not own the trade secrets

26 \_\_\_\_\_  
27 <sup>7</sup> It is also implausible that the alleged agreements would have been signed by both Monsoon and Sood. Sood was simply an officer of  
28 Monsoon and as such would not have signed the documents in his personal capacity. Moreover, the Counterclaim is void of any claim or  
allegation for alter ego liability or other theory that would allow for a claim against Sood individually.

at issue, he is thus hard pressed to argue that he suffered harm from the theft of trade secrets he does not own, either then or now. Moreover, as the Counterclaim is devoid of any allegations of fact (even if true) that would support the finding that Nextdoor.com is using any of Abhyanker's trade secrets, there can be no basis for any damages against Sood or Monsoon.

**2. Abhyanker May Not Bring a Breach Of Written Contract Counterclaim  
Solely Against Nonparty Sood and Monsoon**

"[A] party asserting a counterclaim may attempt to join non-parties to the lawsuit to defend against the counterclaim." *United States ex rel. Branch Consultants, LLC v. Allstate Ins. Co.*, 265 F.R.D. 266, 270 (E.D. La. 2010) (citing Fed. R. Civ. P. 13(h)). However, "[a] counterclaim, at the very minimum, must be asserted against one party that is *already in the lawsuit*." *Id.* (citing 6 CHARLES ALAN WRIGHT, ET AL., FED. PRACTICE & PROC. § 1435 ("Rule 13(h) only authorizes the court to join additional persons in order to adjudicate a counterclaim or cross-claim that is already before the court or one that is being asserted at the same time the addition of a nonparty is sought. *This means that a counterclaim or cross-claim may not be directed solely against persons who are not already parties to the original action, but must involve at least one existing party. If it is, neither the counterclaim nor the party to be added will be allowed in the action.*")) (emphasis added).

Here, Sood and Monsoon are the only parties against whom Abhyanker asserts the "breach of written contract" counterclaim. Counterclaim ¶¶ 156-160. However, neither Sood nor Monsoon was an original party to this lawsuit. *See* Dkt. No. 1. Accordingly, Abhyanker's breach of written contract counterclaim against either Sood or Monsoon cannot be allowed and must be dismissed on this basis alone.

**IV. CONCLUSION**

For the foregoing reasons, Abhyanker's claims for trade secret misappropriation and breach of written contract against Counterdefendants Sood and Monsoon should be dismissed with prejudice.

Dated: March 15, 2013

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INC. (erroneously sued as MONSOON COMPANY)